IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.Rev.Pet.No. 157 of 2007(D)

CC.1078/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA

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REVN. PETITIONER: ACCUSED

SHAJI,
CHUTTIPARAMBIL VEEDU, CHEKKULAM,
THEKKEMALA, VANCHITHRA MURI, KOZHENCHERRY VILLAGE,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
(SUB INSPECTOR OF POLICE, ARANMULA POLICE
STATION IN CR.NO.272/97), REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 157 OF 2007

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Dated this the 5th day of February, 2007

O R D E R

Revision petitioner is one of the accused in C.C. No.1078 of 2006 on the file of the Judicial First Class Magistrate No.I, Pathanamthita. He is the 18th accused. Petitioner along with 23 other persons were charge sheeted alleging that they committed offence punishable under Sections 143, 147, 148, 451, 342 read with 149 IPC and Section 3(2)(a) of the P.D.P.P. Act, 1984. All other accused faced trial. Material witnesses turned hostile and the accused who faced trial were acquitted. Petitioner subsequently appeared before the Magistrate and was enlarged on bail. The case against the petitioner which was splitted up and included in the list of long pending cases was taken out of that register and posted for trial. Learned Magistrate framed charges against the petitioner. Criminal Revision Petition is filed against the framing of charges.

2. Learned counsel appearing for the petitioner, relying on the decision reported in **Kelu Nair and Others v.**

State of Kerala (2005 KLD (Crl.) 621), has argued that in view of the finding that other accused are not members of the unlawful assembly, petitioner alone cannot be convicted. It was further argued that petitioner alone cannot be convicted with the aid of Section 149. In **Kelu Nair's case** (supra) this Court held that an assembly of less 5 members is not an unlawful assembly within the meaning of Section 141.

3. The charge along with the final report taken clearly spells out an offence alleged against the petitioner. Whether witness will support the prosecution case or not is to be decided only at the time of trial of the case. Hence I do not think it just and proper to quash the charges framed against the petitioner on the ground that identity of the other members of the unlawful assembly may not established. It is a defence that can raise before the Magistrate at appropriate stage.

Without prejudice to the right of the petitioner to raise

every defence available to him under law before the Magistrate, this Criminal Revision Petition is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO.

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O R D E R

4TH JANUARY, 2007